

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31366
Docket No. MW-31991
96-3-94-3-343

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned district forces to perform track surfacing work on Track Nos. 8 and 10 at the Radnor 'A' Yard on April 23, 24 and 25, 1993 (System File B-TC-8980/12 (93-649) CSX).
- (2) As a consequence of the above-stated violation, Foreman M. J. Cronin and Equipment Operators R. F. Murray and J. Taylor shall each be allowed twenty-eight (28) hours' pay at their respective time and one-half rates. In addition, each Claimant shall receive three (3) days credit toward their 1993 vacation qualifying period."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

During the week of April 19 through 22, 1993, Claimants' SPG Gang 6XT7 was engaged in track surfacing work in the Radnor Yard. Gang 6XT7 works ten hours per day, Monday through Thursday, with

Friday, Saturday and Sunday as designated rest days. On April 23, 24 and 25, 1993, Carrier used District Forces to operate a tamper and a ballast regulator assigned to Gang 6XT7 to perform track surfacing work on Track Nos. 8 and 10. The Organization filed a claim contending that the work on Tracks 8 and 10 should have been assigned to Gang 6XT7 under the provisions of Section 7 of the Agreement. Carrier denied the claim on the basis that the work performed by District Forces was not work within the SPG Gang's schedule, and that it has the right to have equipment usually assigned to the SPG Gang utilized by others on the rest days of the Gang.

The Board agrees with Carrier that the mere fact that certain items of equipment are usually assigned to a particular gang or force does not prohibit it from assigning other Carrier employees to operate the equipment at times that service requirements may direct. But the fact in this case do not support a showing that this is what occurred here. Instead, the record supports a conclusion that District Forces were utilized on the rest days of Gang 6XT7 to perform tasks identical to those Gang 6XT7 would normally perform, with equipment assigned to the Gang. The record supports a conclusion that District Forces were utilized to avoid working Gang 6XT7 on overtime. This is at odds with Section 7 of the Agreement.

The claim has merit.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of February 1996.